

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK AND TRIAL APPEAL BOARD

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In re Application of: V Technologies International Corporation  
App. Ser. No.: 75/833293  
Filed: May 11, 2000  
Mark: AGILQUEST  
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06-05-2003  
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Trademark Trial and  
Appeal Board

TO: Assistant Commissioner for Trademarks  
Box TTAB/NO FEE  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Motion to Dismiss Appeal and Remand to the Examining Attorney.

Pursuant to TBMP §§ 1212 and 1213, Applicant and Appellant V Technologies International Corporation ("V Technologies"), by counsel, hereby moves that the Trademark Trial and Appeal Board ("TTAB") dismiss the Subject Appeal and remand consideration of the Subject Application to the Examining Attorney. V Technologies requests that the TTAB date

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Trademarks, Box TTAB/NO FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on June 4, 2003.

Christopher J. Mugel

Date of Signature: 6/4/2003

stamp and return the enclosed pre-addressed, postage prepaid postcard to acknowledge its receipt of this motion.

As its ground for this Motion, V Technologies states that the prior registration cited by the Examining Attorney as the sole basis for her final refusal, specifically prior Registration Number 1,972,552, owned by Qualcomm and identifying the mark QUEST (the “552 Registration”), has since been cancelled for the Registrant’s failure to file a Section 8 affidavit. As evidence of such cancellation of the blocking registration, V Technologies attaches as Exhibit A to this motion a print out of the TESS abstract of the ‘552 Registration, stating same to have been cancelled on February 8, 2003. See Exhibit A. As a result, the ground for the final refusal is no longer present, and the Subject Appeal is moot. Since the only basis for withholding a notice of allowance was the now-cancelled prior registration, upon remand to the Examining Attorney, the Subject Application should be allowed for publication.

TBMP § 1213 states, “[w]hen proceedings have been suspended, at the request of the applicant, in an ex-parte appeal to the Board, and the event for which proceedings have been suspended occurs ... the applicant should file a paper notifying the Board thereof and requesting that further appropriate action be taken in the appeal.” TBMP § 1213.

TBMP Section 1212 expressly contemplates that the TTAB should dismiss and remand in circumstances such as this:

If, during the pendency of an ex parte appeal involving a refusal to register under Section 2(d) of the Act, the cited registration is cancelled, or is assigned to the applicant, the appeal will be moot insofar as that issue is concerned. If the refusal to register on the basis of the cancelled or assigned registration is the only issue involved in the appeal, the Board will dismiss the appeal as moot, and the application will be sent to the Trademark Examining Attorney for approval for publication (or for registration, in the case of a Supplemental Register application). If the appeal involves additional issues, it will go forward solely on the additional issues.

TBMP § 1212. In the case of the Subject Application, the Examining Attorney issued her final refusal based solely under Section 2(d), and solely based on the '552 Registration, all other bases for refusal having been previously resolved. V Technologies therefore respectfully submits that, as a result, that the appropriate course of action now dismissal of the appeal en toto and remand of the Subject Application for approval for publication.

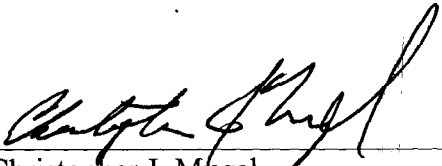
Appellant provides the following additional background for the general information of the Board.

Applicant/Appellant filed the Subject Application, identifying the mark AGILQUEST, on October 27, 1999. The Examining Attorney issued a Final Refusal of the Subject Application on April 2, 2001. The sole basis of the Final Refusal was Section 2(d), and the sole remaining citation in that Final Refusal was the '552 Registration. On October 2, 2001, V Technologies concurrently filed: (1) a request for reconsideration; (2) a notice of appeal; and (3) a motion for suspension of the appeal, for the latter citing as multiple grounds that (a) suspension would permit time for the examiner to entertain the request for reconsideration, and (b) that the '552 Registration would soon be due for a Section 8 filing, and that the refusal would be moot if that filing was not made. On November 20, 2001, the examining attorney issued Office Action No. 3, stating that she continued to refuse the application under Section 2(d), citing the '552 Registration, thus denying the request for reconsideration. On December 7, 2001, V Technologies filed a Renewed Request for Suspension of Appeal, again noting that a Section 8 affidavit would soon be due on the '552 Registration. On October 30, 2002, Paralegal Specialist Rochelle Ricks on behalf of the TTAB issued a notice that the Board was suspending the Subject Appeal until a determination could be made as to whether the '552 Registration should be cancelled for failure to file a Section 8 affidavit.

Based on Applicant's investigation of PTO records, no Affidavit was filed and the '552 Registration was canceled on February 8, 2002. See Exhibit A. Therefore, the basis for the Examiner's refusal is no longer valid.

In summary, Applicant hereby notifies the Board that Registration No. 1,972,552 has been canceled by the Patent and Trademark Office and as a result that the bases for examiner's final refusal no longer is present and the Subject Appeal is moot. Accordingly, V Technology respectfully requests that the Subject Appeal be dismissed as moot, and that the Subject Application be remanded to the Examining Attorney so that the Section 2(d) refusal can be lifted and the Subject Application may be allowed for publication.

Richmond, Virginia  
June 4, 2003

  
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cc: Sheila Marsh, Esquire

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6/4/2003 10:55 AM



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### Typed Drawing

<b>Word Mark</b>	QUEST
<b>Goods and Services</b>	(CANCELLED) IC 009. US 021 023 026 036 038. G & S: computer software, namely electronic mail software for sending, receiving and managing electronic mail messages. FIRST USE: 19930830. FIRST USE IN COMMERCE: 19930930
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	74629290
<b>Filing Date</b>	January 31, 1995
<b>Published for Opposition</b>	September 12, 1995
<b>Registration Number</b>	1972552
<b>Registration Date</b>	May 7, 1996
<b>Owner</b>	(REGISTRANT) QUALCOMM Incorporated CORPORATION DELAWARE 6455 Lusk Boulevard San Diego CALIFORNIA 92121
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Theresa R. Willi
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	DEAD

**EXHIBIT A**

**Cancellation**  
**Date** February 8, 2003

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